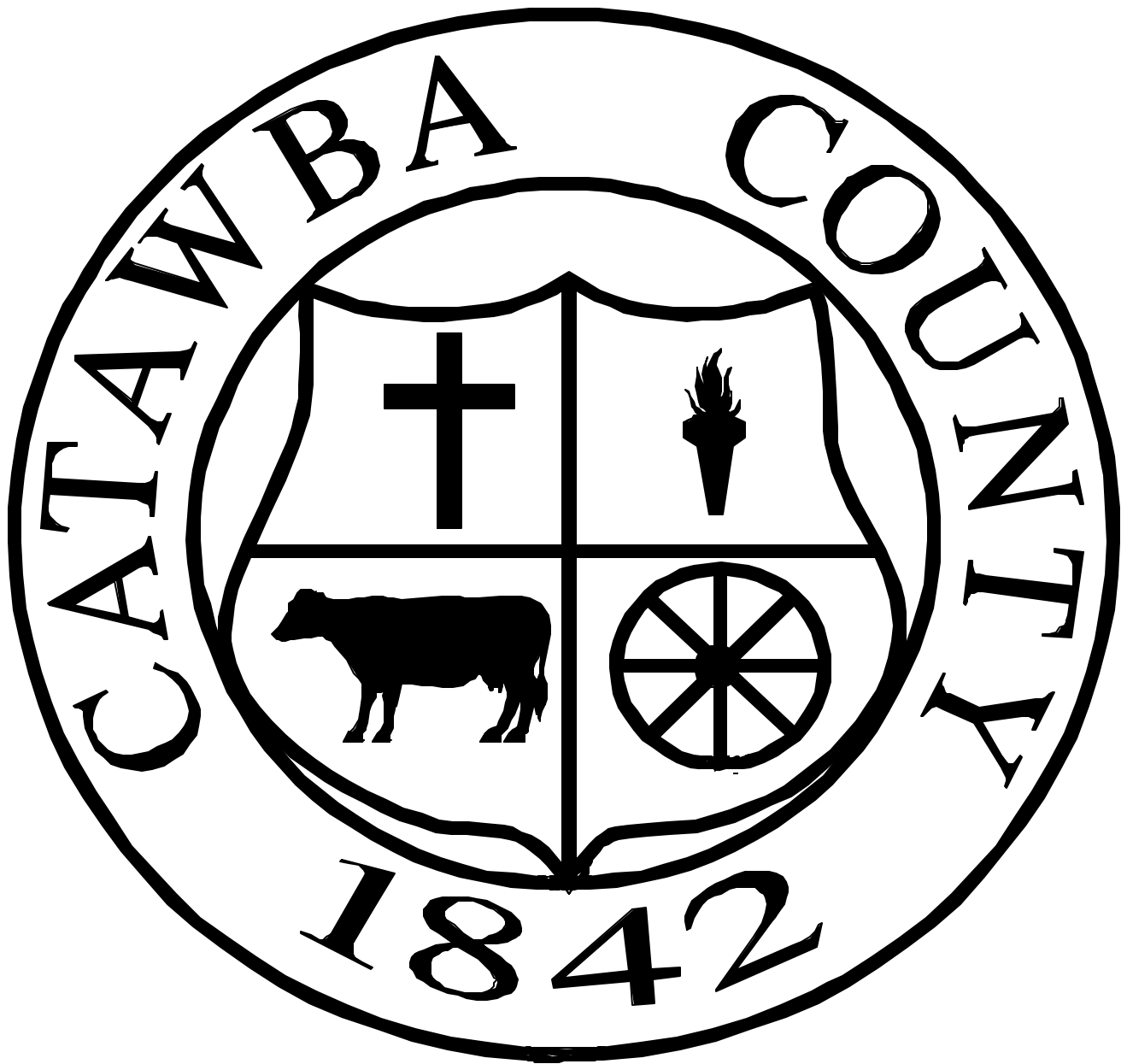


Subdivision Ordinance



Current as of 7/01/2003

Chapter 36 SUBDIVISIONS*

Article I. In General

- Sec. 36-1. Authority; jurisdiction; purpose.
- Sec. 36-2. Definitions.
- Sec. 36-3. Lots contrary to regulations.
- Sec. 36-4. Suitability of lots for intended uses.
- Sec. 36-5. Effect of zoning and other regulations
- Sec. 36-6. Application; effect.
- Secs. 36-7--36-35. Reserved.

Article II. Plat Approval

- Sec. 36-36. Application, review and approval procedures for major subdivisions.
- Sec. 36-37. Application, review and approval procedures for minor subdivisions.
- Sec. 36-38. Application, review and approval procedures for family subdivisions.
- Sec. 36-39. Phasing.
- Sec. 36-40. Utility easements; substation sites.
- Sec. 36-41. Appeals process.
- Secs. 36-42--36-70. Reserved.

Article III. Required Improvements, Dedications, Reservations, Minimum Standard of Design

- Sec. 36-71. Scope; applicability; phasing.
- Sec. 36-72. Road standards.
- Sec. 36-73. Easements.
- Sec. 36-74. Preservation of water areas.
- Sec. 36-75. Major new drainageways.
- Sec. 36-76. Protection from flooding.
- Sec. 36-77. Blocks.
- Sec. 36-78. Lots.
- Sec. 36-79. Alternative subdivision designs.
- Sec. 36-80. Cluster and traditional subdivision open space design requirements.
- Sec. 36-81. Homeowners' associations.
- Sec. 36-82. Markers and monuments.
- Sec. 36-83. Ground cover.
- Sec. 36-84. Driveways.
- Sec. 36-85. Water supply and sanitary sewer.
- Sec. 36-86. Erosion protection; preservation of topsoil and vegetation.
- Sec. 36-87. Fire protection.
- Sec. 36-88. Underground utilities.
- Secs. 36-89--36-115. Reserved.

Article IV. Completion; Maintenance; Occupancy

- Sec. 36-116. Completion required before approval of final plat.
- Sec. 36-117. Performance guarantees.
- Sec. 36-118. Failure to complete work under performance guarantee.
- Sec. 36-119. Maintenance of land and improvements.
- Sec. 36-120. Guarantee of other governmental agency or public utility.
- Sec. 36-121. Building permits and certificates of occupancy.
- Secs. 36-122--36-150. Reserved.

Article V. Amendments and Enforcement

- Sec. 36-151. Authority.
- Sec. 36-152. Planning board and administration review; recommendation.
- Sec. 36-153. Public hearing and notice.
- Sec. 36-154. Limitation on resubmittal.
- Sec. 36-155. Violations; remedies.
- Sec. 36-156. Penalty.

***Cross references:** Buildings and building regulations, ch. 8; environment, ch. 16; lakes, waterways and parks, ch. 20; manufactured home parks, ch. 26; streets, sidewalks and other public places, ch. 34; water and sewer, ch. 42; zoning, ch. 44.

State law references: Authority to regulate the subdivision of land, G.S. 153A-330 et seq.

ARTICLE I. IN GENERAL

Sec. 36-1. Authority; jurisdiction; purpose.

- (a) This chapter, enacted in accordance with the provisions of G.S. 153A-330--153A-339, 39-32.1--39.32.4, 47-30--47-32, and 136-90--136-102.6, shall apply to all of the county outside the jurisdictions of the various municipalities in the county as those jurisdictions may exist.
- (b) Public health, safety, economy, good order, appearance, convenience, morals and the general welfare require the harmonious, orderly and progressive development of land within the jurisdiction of the county. In furtherance of this intent, regulation of land subdivision by the county has the purposes, among others, to:
 - (1) Encourage economically sound and stable development in the county;
 - (2) Ensure the timely provision and coordination of required streets and highways, utilities and other facilities and services to new land developments;
 - (3) Ensure adequate provision of safe and convenient traffic access and circulation;
 - (4) Ensure provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational and other public purposes or the provision of funds in lieu of dedication;
 - (5) Ensure, in general, the wise and timely development of new areas, in harmony with the land development plan and other official plans of the county; and
 - (6) Ensure accurate public records of land ownership, to facilitate land ownership transfer, the effective conduct of public and private business and the protection of private property rights.
- (c) This chapter is intended to provide for the harmonious development of the county jurisdiction and in particular for the following:
 - (1) The coordination of streets within subdivisions with other existing or planned streets or official map streets;
 - (2) Appropriate shapes and sizes of blocks and lots;
 - (3) The provision of land and of easements for utilities and other public facilities and services; and
 - (4) A distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, prosperity and general welfare.

(Code 1995, § 514.001)

Sec. 36-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Director of planning and development means the individual whose title is director of planning and development or his appointed designee. The planning and development department, with the director of planning and development being a staff member, is designated as a planning agency pursuant to G.S. 153A-321 and 153A-332.

Family subdivision means a subdivision where lots are conveyed to or developed for building purposes by members of the lineal family. Lineal family shall include only direct lineal descendants (children, grandchildren, great-grandchildren), direct lineal ascendants (father, mother, grandfather, grandmother) and spouses. Lots can be conveyed as a gift, as settlement of the property owner's estate or for a nominal consideration. In determining the number of lots created, the following criteria are established: (i) the residual tract where a residential structure is located will not be considered a new lot; and (ii) only lots that must use the legal right-of-way for direct access will be considered new lots. Family subdivisions are classified as the following:

- (1) *Estate settlement* means the conveyance of a lot or tract for the purpose of dividing lands among the tenants in common, all of whom, by intestacy or by will, inherited the land from a common ancestor.
- (2) *Level 1 family subdivision* means the creation of not more than two lots after the effective date of the ordinance from which this chapter is derived for members of the lineal family.
- (3) *Level 2 family subdivision* means the creation of more than two lots but less than six lots after the effective date of the ordinance from which this chapter is derived for members of the lineal family.

Major subdivision means a nonfamily subdivision where:

- (1) New roads are proposed, road rights-of-way are dedicated;
- (2) Additional right-of-way is dedicated as required in this chapter; or
- (3) The subdivision does not meet the definition of a family or minor subdivision as defined in this section.

Minor subdivision means a nonfamily subdivision where:

- (1) Five or fewer lots are created that front along an existing state-maintained road;
- (2) Five or fewer lots are created that front along a minimum 45-foot dedicated right-of-way that was platted and recorded prior to September 30, 1975; or
- (3) Five or fewer lots are created that front along an existing nonstate-maintained road which is paved to state standards as verified by the state

department of transportation.

In determining the number of lots created, the following criterion is established: The tract where a residential structure is located will not be considered a new lot.

Subdivision includes all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development, whether immediate or future, and includes all divisions of land involving the dedication of a new street or a change in existing streets; provided that the following shall not be included within this definition nor be subject to the regulations authorized by this chapter:

- (1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in this chapter.
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for widening or opening of streets.
- (4) The division of a tract in single ownership, the entire area of which is no greater than two acres, into not more than three lots, if no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the county, as shown in this chapter.

In the interpretation of subsections (2) and (4) of this definition, the phrase "where no street right-of-way dedication is involved" means that any such parcel shall be served by an existing legal right-of-way. A legal right-of-way can be any easement, state-maintained road, dedicated right-of-way, or prescriptive easement, provided the individual submits satisfactory evidence of the easement. Such easements, with exception of state-maintained roads, must have existed at the time this section was adopted on June 19, 1989. A prescriptive easement is a right to use another's property which is not inconsistent with the owner's rights and which is acquired by a use, open and notorious, adverse and continuous for the statutory period. To a certain extent, it resembles title by adverse possession but differs to the extent that the adverse user acquires only an easement and not title.

(Code 1995, § 514.002)

Cross references: Definitions generally, § 1-2.

Sec. 36-3. Lots contrary to regulations.

A parcel of land for which a separate deed has been recorded after July 1982 shall not be occupied until such lot shall have a subdivision plat approved by the county in accordance with the subdivision regulations currently in effect.

(Code 1995, § 514.003)

Sec. 36-4. Suitability of lots for intended uses.

No lot shall be approved unless an adequate portion thereof is suitable for a use permitted by the zoning regulations set forth in chapter 44. In particular, no lot shall be platted for building purposes unless it contains an adequate building site, as required by section 36-78(f), except as provided in section 36-40.

(Code 1995, § 514.004)

Sec. 36-5. Effect of zoning and other regulations

- (a) Regulations set forth in this chapter are part of a system of regulations governing land subdivision, development and use and construction and improvements on land, supplementing and supplemented by zoning, health, drainage improvement, flood hazard and other controls.
- (b) Applications for subdivision approval shall be considered in relation to all such regulations applicable in the particular case and not only in relation to the subdivision regulations set forth in this chapter. Where there are conflicts between the regulations in this chapter and other lawfully adopted regulations involved in such considerations, those which establish the highest requirements or most stringent limitations shall govern except where specific exceptions are set forth in such regulations.

(Code 1995, § 514.005)

Sec. 36-6. Application; effect.

- (a) *Compliance required.* Within the jurisdiction of this chapter, no subdivision shall be made, platted or recorded for any purpose, nor shall parcels resulting from such subdivision be sold or offered for sale unless such subdivision meets all of the requirements of this chapter and applicable related regulations, as set forth in section 36-5.
- (b) *Plat approval required.* No plat of any subdivision within such jurisdiction shall be filed or recorded by the county register of deeds until it shall have been submitted to and approved by the appropriate authority and such approval entered in writing on the plat.
- (c) *Filing or recording of unapproved plat.* Filing or recording of a plat of a subdivision not having the approval of the appropriate authority, as required in this chapter, shall be punishable as provided by sections 36-155 and 36-156.
- (d) *Penalties for selling lots in unapproved subdivision.* The owner or agent of the owner of any land to be subdivided within the area of jurisdiction of this chapter who transfers or sells or agrees to sell or negotiates to sell such land by reference to or exhibition of or by any other use of a plat of a subdivision of such land, before such plat has been approved by the county and recorded by the register of deeds, shall be guilty of a misdemeanor. Upon conviction thereof, he shall be punished as provided by section 36-156. The description of the land by metes and

bounds in the instrument of transfer shall not exempt the transaction from these penalties. Such transfer, sale or agreement may be enjoined by appropriate action.

(e) *Effect of plat approval on status of dedication, acceptance.* The effect of plat approval on the status of dedications is as follows:

(1) The approval of a plat shall not be deemed to constitute or effect an acceptance by the county or the public of the dedication of any street, ground or other improvements shown upon the plat.

(2) Acceptance of such dedications shall be only by resolution of the board of commissioners or appropriate action by the state department of transportation. The board of commissioners shall consider such resolutions only on determination that any required improvements have been properly installed and all applicable conditions met, as set out in articles III and IV of this chapter.

(f) *Effect of subdivision regulations on naming streets.* It shall be unlawful for any person in laying out any new street or road to name such street or road on any plat, by any marking, or in any deed or instrument without first getting the approval of the appropriate authority. Any person violating this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 36-156.

(Code 1995, § 514.006)

Secs. 36-7--36-35. Reserved.

ARTICLE II. PLAT APPROVAL

Sec. 36-36. Application, review and approval procedures for major subdivisions.

- (a) *Subdivision review board established as review agency for major preliminary subdivision plats.* The subdivision review board is established as the planning agency pursuant to G.S. 153A-321 and 153A-332 to review and approve, approve with modifications, or disapprove applications for approval of preliminary major plats and to take other actions as required by this chapter in accord with the procedures, requirements and standards of this chapter and regulations under this chapter.
- (b) *Membership of subdivision review board.* The subdivision review board shall consist of individuals as appointed by the board of commissioners.
- (c) *Powers and duties of subdivision review board.* The subdivision review board, in relation to this chapter, shall have the following powers and duties:
 - (1) Receive applications for approval of preliminary major plats.
 - (2) Take action under this chapter to approve, approve with conditions, or disapprove applications for approval of preliminary major plats.
 - (3) Take action on requests for extensions of preliminary plat approvals.
 - (4) Establish, approve and publish rules of procedure for the conduct of its affairs.
 - (5) Maintain a record of its actions, including the votes of its members, attendance and a summary of the information submitted to it.
 - (6) Receive the cooperation of the various elements of the government of the county.
- (d) *Applications for preliminary plats.* Applications for preliminary plats shall be filed as follows:
 - (1) Applications for approval of preliminary plats shall be filed with the county planning and zoning office in form and manner as established in the Manual of Practice for the subdivision review board's consideration. The application shall be accompanied by applicable fees as approved by the board of commissioners.
 - (2) The director of planning and development shall review the applications and make recommendations to the subdivision review board, including the recommendations of other affected agencies of government. The subdivision review board shall take action as provided in this section.
 - (3) Each application for a major plat approval shall contain the name and address of a person to whom notice of the meeting at which the

application is to be considered may be sent.

- (e) *Time limits.* Time limits for actions on applications and for work to proceed are as follows:

- (1) *Timing of actions.* Time limits for actions by the subdivision review board are as follows:

- a. The subdivision review board shall take action upon an application for approval of a preliminary major plat within 60 calendar days after acceptance of the application by the director of planning and development unless the applicant consents in writing to an extension of this time limit.
- b. If the subdivision review board or director of planning and development determines that there are errors or omissions in the application, plat or related materials during the processing period, unless such errors or omissions are minor and promptly correctable, the application and related materials shall be returned to the applicant with written findings as to required corrections and/or completions necessary prior to resubmission. A new 60-day limitation shall begin as of the date of acceptance of such resubmission.
- c. Where applications are approved unconditionally, the director of planning and development shall notify the applicant of the approval date.
- d. Where applications are approved with conditions, the director of planning and development shall notify the applicant in writing of the conditions and the reasons.
- e. Where applications are denied, the director of planning and development shall notify the applicant of the reasons.
- f. All such notices shall be in writing and dispatched by first class mail to the address required by subsection (d) of this section within ten working days of the date of decision by the subdivision review board.
- g. Approvals of major plats or disapprovals and grounds therefor shall be recorded in the minutes of the subdivision review board.

- (2) *Effect of failure to act within time limits.* When the subdivision review board fails to approve, conditionally approve or disapprove plats within 60 calendar days from the date of acceptance of the application, except where applications have been returned for correction of errors or omissions and resubmittal or applicants have extended time limitations, as provided in subsection (e)(1) of this section, a major plat shall be deemed to have been approved without conditions.

- (3) *Approval of preliminary major plats and expiration of vested rights.* Time

limits on the approval of preliminary major plats and the expiration of vested rights are as follows:

- a. *Preliminary plats approved on or after the effective date of the ordinance from which this section is derived.* For preliminary plats approved on or after the effective date of the ordinance from which this section is derived, if the subdivision has not been submitted for final plat approval within three years from the date the preliminary plat approval was granted by the subdivision review board, the preliminary plat approval expires, and the application process must begin again as a new application and must meet the ordinances in effect at that time. Any rights vesting, as defined in G.S. 153A-344.1, shall expire along with the application. An applicant may apply to the subdivision review board for an extension of up to three years, so long as the application is filed prior to the preliminary plat approval's expiration date. Such an extension may be granted only where the applicant demonstrates good cause and where there has been a substantial expenditure of resources directly related to the subdivision development. The cumulative time period for obtaining final plat approval shall not exceed a total period of six years from the date of the initial preliminary plat approval.
- b. *Site plans/preliminary plats approved prior to effective date of the ordinance from which this section derives.* For site plans/preliminary plats approved prior to the effective date of the ordinance from which this section is derived, any outstanding site plan/preliminary plat approval shall have two years from the date the site plan/preliminary plat was approved to obtain final plat approval. Where such final approval has not been obtained within two years from the date of receiving site plan/preliminary plat approval, the applicant may apply to the subdivision review board for an extension of up to three years, so long as the application is filed prior to the site plan/preliminary plat approval's expiration date. Such an extension may be granted only where the applicant demonstrates good cause and where there has been a substantial expenditure of resources directly related to the subdivision development. For those developments whose site plan/preliminary plat approval is older than two years where the developer has finalized at least one phase involving road construction improvements, an applicant may apply to the subdivision review board for an extension of time up to two years. Such an extension may be granted only where the applicant demonstrates good cause and where there has been a substantial expenditure of resources directly related to the subdivision development. In all cases where extensions are granted, the cumulative time period for obtaining final plat approval shall not exceed a total period of six years from the date of the initial site plan/preliminary plat approval. For those

developments where the site plan/preliminary plat approval is older than two years and the developer has not finalized at least one phase involving road construction improvements, the approval is expired, and the development must meet the current ordinance requirements.

- (f) *Administrative approval of all final major plats.* If the final major plat conforms to the approved preliminary major plat, requirements lawfully established under this chapter, and all preliminary conditions of approval, the director of planning and development shall administratively approve the final major plat within ten working days from receipt of a complete final subdivision submittal. All required improvements shall be complete or a performance guarantee package shall be submitted in accordance with section 36-117 and subsequently approved by the director of planning and development.

(Code 1995, § 514.015)

Sec. 36-37. Application, review and approval procedures for minor subdivisions.

- (a) Minor subdivision plats shall be submitted to the director of planning and development for review and processing. The director of planning and development shall have up to five working days to review the minor plat and make the following findings:
 - (1) The application and plat qualify as a minor subdivision as defined in this chapter; and
 - (2) Other applicable subdivision and zoning ordinance requirements are met.
- (b) Procedures set forth in the Manual of Practice for handling applications for approval of minor subdivisions are intended to simplify processing of routine small subdivisions with due regard to protection of public interest. Some flexibility is allowed as to submissions and processing. The main difference in processing shall be the ability of an applicant to avoid the need to seek, for a minor subdivision, approval of a preliminary plat. The applicant may apply directly for approval of a final plat.

(Code 1995, § 514.016)

Sec. 36-38. Application, review and approval procedures for family subdivisions.

The specific procedures for review and approval as determined by the defined level of a family subdivision are as follows:

- (1) *Level 1 family subdivision.* The subdivider shall submit a subdivision plat and supporting information as indicated in the Manual of Practice to the director of planning and development. Upon receipt of the required information, staff shall have up to five working days to review the plat to determine if it meets the requirements of a level 1 family subdivision in accordance with the following:

- a. The application and plat indicate that it qualifies as a level 1 family subdivision as defined in this chapter;
 - b. Where right-of-way is less than the required 45-foot width, additional right-of-way has been dedicated by the subdivider and others, where applicable; and
 - c. The right-of-way, as shown on the submitted plat, is located where a road can feasibly be built.
- (2) *Level 2 family subdivision.* Procedures for a level 2 family subdivision are as follows:
- a. The subdivider shall submit a preliminary subdivision plat and supporting information as indicated in the Manual of Practice to the director of planning and development. Upon receipt of the required information, staff shall have up to ten working days to review the plat to determine if it meets the requirements for a level 2 family subdivision. The following findings shall be made in making this determination:
 - 1. The application and plat indicate that it qualifies as a level 2 family subdivision as defined in this chapter; and
 - 2. The road design information as submitted is in accordance with the state department of transportation's Subdivision Roads, Minimum Construction Standards with exception to the paving standard as reviewed by the utilities and engineering department.
 - b. When a level 2 family subdivision is submitted, the following general approval process shall be adhered to:
 - 1. If the director of planning and development determines there are errors or omissions in the application, plat, or related materials during the review period indicated, unless such errors or omissions are minor and promptly correctable, the application and related materials shall be returned to the applicant with written findings as to required corrections and/or completions necessary prior to resubmission. A new review time limitation shall begin as of the date of acceptance of such resubmission.
 - 2. Where applications are approved unconditionally, the director of planning and development shall notify the applicant in writing for a preliminary plat or in writing on the final plat, which is then to be recorded at the office of the register of deeds.
 - 3. Where applications are approved with conditions, the director of planning and development shall notify the

applicant in writing of the conditions and the reasons.

4. Where applications are denied, the director of planning and development shall notify the applicant of the reasons. All such notices shall be in writing and dispatched by first class mail to the address submitted with the required application information. However, upon request of the developer, such notice may be verbally presented.
 5. The developer shall have two years after the date of preliminary approval to apply for final subdivision plat approval, subject to extensions, upon application for a period not exceeding one year for a total cumulative term to not exceed four years.
- c. Upon approval of the preliminary subdivision plat and meeting any conditions of approval, the subdivider may proceed with the preparation of the final plat and the installation of the required improvements in accordance with the preliminary plat and the requirements of this chapter. Before approval of the final plat, the subdivider shall have installed the improvements specified in this chapter or submit a complete performance guarantee package as indicated in section 36-117 and subsequently approved by the director of planning and development.
 - d. The subdivider shall then submit a final subdivision plat and supporting information as indicated in the Manual of Practice to the director of planning and development. Upon receipt of the required information, staff shall have up to five working days to review the plat to determine if it is in conformance with the approved preliminary plat and the improvement requirements of this chapter.

(Code 1995, § 514.017)

Sec. 36-39. Phasing.

A subdivision may be developed in phases, provided that:

- (1) Each phase contains at least six lots, unless shown on a phasing plan approved by the subdivision review board as part of the preliminary subdivision plan after expressly determining that the proposed phasing makes it unlikely that a subdivider could abandon a final phase that contains a required extension of a road or other infrastructure.
- (2) A phasing plan is submitted showing the phases of development and the requirements of this chapter that will be satisfied in each phase is approved as part of the preliminary plan.
- (3) The number of lots and amount of any required open space in the phase

and any previously approved phases is at least proportional to the portion of the subdivision site area within the phase.

- (4) The degree and extent of roads, water supply, sewage disposal, stormwater management, erosion and sedimentation control, and other required improvements in the phase and previously approved phases is sufficient to serve or handle all development within the phase.

(Code 1995, § 514.018)

Sec. 36-40. Utility easements; substation sites.

- (a) Where it is proposed to locate major utilities easements (defined for purposes of this chapter as being more than 30 feet in width) and/or sites for substations, such as pumping stations, relay towers, pressure regulating stations and the like, in a subdivision, procedures shall be as generally provided in section 36-37.
- (b) Where dimensional or other characteristics of such land are such that they could not be used for other purposes under the zoning applying in the district, the plan shall indicate and restrict use to easement or substation purposes, and requirements generally applicable to access, dimensions or other characteristics of that land shall not apply.
- (c) Departmental reports in such cases shall include findings as to the effect of the proposed location in adjacent uses, preservation of areas of major ecological importance and as to whether sites for substations, if involved, are adequate to provide required screening.

(Code 1995, § 514.020)

Sec. 36-41. Appeals process.

- (a) *Appeals of subdivision review board's actions.* Appeals of actions of the subdivision review board made under this chapter shall be taken to the planning board by the applicant of the subdivision plat or his agent. Appeals shall be submitted to the planning and zoning office in writing within 30 days of the date of the action of the subdivision review board.
- (b) *Appeals of director of planning and development's actions.* Any decision of the director of planning and development made in regard to this chapter may be appealed to the planning board in writing by the applicant within a 30-day period following the date of the decision. Request for an appeal shall be made in writing to the recording secretary of the planning board. If a written appeal is not made within the 30-day period, the matter shall be deemed to be closed, and the decision of the director of planning and development shall stand.

(Code 1995, § 514.021)

Secs. 36-42--36-70. Reserved.

ARTICLE III. REQUIRED IMPROVEMENTS, DEDICATIONS, RESERVATIONS, MINIMUM STANDARD OF DESIGN

Sec. 36-71. Scope; applicability; phasing.

- (a) Before final plat approval, each subdivision shall contain the improvements specified in this chapter which apply to the classification of the subdivision submitted and all conditions of approval. The improvements shall be installed in accordance with the requirements of this chapter and paid for by the subdivider, unless other means of financing are specifically allowed within the requirements of this chapter and paid for by the subdivider. Land shall be dedicated and reserved in each subdivision as specified in this chapter. Each subdivision shall adhere to the minimum standards of design established by this chapter.
- (b) In addition to the other requirements set forth in this chapter, required improvements shall conform to any applicable specifications set forth in the Manual of Practice, published by the county.
- (c) If extraordinary surface or subsurface conditions, terrain, the general drainage pattern in the area, existing or probable development in the vicinity, or other circumstances exist or occur, the subdivision review board, upon making supporting written findings, may establish greater or lesser requirements in particular cases.
- (d) Subdivisions may be designated to be constructed and platted in phases. However, the subdivision review board may not approve a phasing plan when in its opinion such phasing will not provide for adequate public facilities to support any such phase independent of the overall development plan. In approving phasing plans, the subdivision review board may require that additional streets, water and sewer facilities or other required public facilities be constructed as part of the phase in order to ensure that sufficient public facilities will be in place to support such phase independent of any future development.

(Code 1995, § 514.030)

Sec. 36-72. Road standards.

- (a) *Definition.* The term "private," as it appears in this section, refers to the

maintenance responsibilities and construction standards of the road and not the dedication status, with the exception of subsection (d)(1)e of this section pertaining to neighborhood private roads.

- (b) *Designation.* All road rights-of-way shall be designated in writing on the face of the plat as being dedicated to the "public," regardless of the road construction requirements. Roads that are not required to be constructed to state standards will be privately maintained, and maintenance responsibilities shall be noted on the final plat as provided in subsection (d)(2) of this section. Regardless of the designation of the road, every lot shall have access to a road that is sufficient to provide a means of ingress and egress for emergency vehicles as well as all those likely to need or desire access to the property for its intended use.
- (c) *Public roads.* All subdivision lots shall abut on a public road except as provided in subsection (d) of this section, pertaining to private roads. All public roads shall be dedicated to the public, designed, and paved within the subdivision and to a state-maintained road. The subdivision roads shall be designed and built according to the standards in the state department of transportation's Subdivision Roads, Minimum Construction Standards. These roads shall be maintained by the developer/owner until the state department of transportation assumes responsibility for the maintenance. Roads which are not eligible to be put on the state department of transportation system because there are too few residences shall nevertheless be dedicated for public use and shall be built in accordance with state department of transportation standards. Where a road has been offered for public dedication, that offer may not be withdrawn without prior review and approval from the county subdivision review board.
- (d) *Private roads.* Private roads shall be constructed in accordance with the following:
 - (1) *Standards.* The construction of new private roads or subdivisions fronting along existing private roads which are not maintained by the state department of transportation are allowed for specific types of family subdivisions, minor subdivisions, and major subdivisions as indicated in this subsection (d)(1). The standards for private roads based on the type of family subdivision, minor subdivision or major subdivision proposed as defined in section 36-2 are as follows:
 - a. *Estate settlement.* The private road shall meet the right-of-way requirements of the state department of transportation within the property being subdivided and shall have a minimum 15-foot right-of-way from the subdivision to a state-maintained road. No basic construction standards are required.
 - b. *Level 1 family subdivision.* The private road shall meet the right-of-way requirement of the state department of transportation within the subdivision and to a state-maintained road. No basic road construction standards are required.
 - c. *Level 2 family subdivision.* The private road shall meet the right-

of-way requirement, design and construction standards of the state department of transportation, with the exception of pavement from the subdivision to a state-maintained road.

- d. *Minor subdivision.* Where lots front along a right-of-way that was recorded prior to September 30, 1975, or a non-state-maintained road which is verified to be constructed to state standards, such right-of-way must provide legal access from the lots to a state-maintained road. Additional right-of-way or road construction standards are not required as long as new roads or rights-of-way are not being created.
- e. *Neighborhood private roads.* A neighborhood private road is a major subdivision road that is designed and built to the state department of transportation's Subdivision Roads, Minimum Construction Standards, as verified by a state-licensed professional engineer (PE), but is not dedicated to the public and not to be maintained by the state department of transportation. Neighborhood private roads are reviewed and approved by the subdivision review board and are considered for approval when, due to specific situations, the road is not eligible for being taken into the state department of transportation street maintenance system. Neighborhood private roads shall connect to an existing state-maintained road. Neighborhood private roads are to be maintained privately by a homeowners' association approved by the subdivision review board. The maintenance agreement shall include but not be limited to the following items:
 - 1. A legally incorporated homeowners' association shall be established for the property owners within the entire subdivision.
 - 2. All property owners within the subdivision shall be members of the homeowners' association.
 - 3. The subdivider shall convey, in a fee simple ownership, all neighborhood private roads within the subdivision to the homeowners' association.
 - 4. The responsibility for all maintenance of neighborhood private roads shall be with the homeowners' association.
 - 5. The passage of the responsibility for maintenance of neighborhood private roads from the developer to the homeowners' association shall be noted in the deed of each purchaser of property within the subdivision.
 - 6. At the time of preparation of the sales agreement, the developer shall include a disclosure statement to the prospective buyer. The disclosure statement shall provide

an explanation of the consequences and responsibilities regarding the maintenance of a private road and shall fully and accurately disclose the party who shall be responsible for the construction and maintenance of the subdivision roads.

- (2) *Maintenance statement.* All private roads shall have a maintenance statement included on the face of the final plat indicating who will have responsibility for maintaining the streets. Also, where private roads are created for family subdivisions, an additional statement must be included on the plat indicating that the plat was approved as a family subdivision and further subdividing of the property is subject to the road improvement requirements of this chapter.
- (e) *Access to adjacent properties.* For the purposes of providing improved traffic flow, limiting the number of subdivision street intersections on collector and arterial streets and providing access between adjoining subdivisions, the approving authority may require that a proposed street be extended by dedication or reservation to the boundary of such property and a temporary cul-de-sac be provided.
- (f) *Permits for connection to state roads.* An approved state department of transportation driveway connection permit is required for connection of a subdivision street to any existing state system road. This permit is required prior to any construction which connects the subdivision road to the state system road.
- (g) *Marginal access street.* Where a tract of land to be subdivided adjoins a principal arterial, minor arterial or major thoroughfare as designated on the Hickory-Newton-Conover Urban Area Thoroughfare Plan or the county thoroughfare plan, the subdivider shall be required to provide a collector road parallel to the arterial/thoroughfare or utilize reverse frontage along the subdivision's public road for access to the lots. Where reverse frontage is utilized, private driveways shall be prevented from having direct access to the arterial/thoroughfare as provided in section 36-78(c). When it is not feasible or practical for the subdivider to provide a collector road or utilize reverse frontage or when the subdivision review board determines that the installation of such would result in a less desirable subdivision design, the subdivision review board may grant an exception to this requirement, and the subdivision review board shall find that the spirit and intent of this chapter are preserved and that circumstances particular to the subject property, such as topography or shape of the tract, warrant the exception.
- (h) *Relation to thoroughfare and land development plans.* Arrangement, character, extent, width, grade and location of all streets shall conform to the officially adopted Hickory-Newton-Conover Urban Area Thoroughfare Plan, the adopted county land development plan or elements thereof and any other adopted thoroughfare plan and shall be considered in relation to the following:
 - (1) Existing and proposed transportation patterns;
 - (2) Topographic and other natural features;

- (3) Public convenience and safety; and
 - (4) Appropriate relation to proposed uses of land to be served by such streets and existing or potential land uses in adjoining areas.
- (i) *Multiple driveway accesses.* Multiple driveway accesses into a subdivision may be required to provide additional ingress and egress. In determining whether to require multiple accesses, the subdivision review board shall look at the following:
- (1) The overall number of lots served by the street system;
 - (2) The proposed street system pattern;
 - (3) The configuration of the tract of land; and
 - (4) The amount of road frontage available.

(Code 1995, § 514.031; Ord. No. 2002-13, 12-16-2002)

Sec. 36-73. Easements.

- (a) *Utilities.* Easements for utilities shall be provided where necessary along front, rear or side lot lines in the subdivision, but shall not be required to center on such lines. Such easements shall be sufficiently wide to provide for installation of such utilities and access for maintenance and operation.
- (b) *Minor drainage.* For purposes of this chapter, minor drainage easements are defined as provided for drainage of surface waters from four or fewer lots, and not involving water bodies of substantial significance in the ecology of the area, as described. Minor drainage easements, where required, shall be permitted to cross lots at other points only where such arrangement is found by the subdivision review board to be practically necessary as a result of topography or soils conditions or improved flow and where such arrangement will leave a suitable buildable area, safe from inundation, erosion or subsidence, and safely accessible from approved streets. Where necessary for operation, construction or maintenance, the subdivision review board may require, in accord with the terms of the easement, minor drainage easements to be cleared or kept free of undergrowth, trees and other obstructions.
- (c) *Utilities in drainage easements.* Utilities in drainage easements shall be permitted only upon specific authorization by the subdivision review board and only in locations authorized.

(Code 1995, § 514.032)

Sec. 36-74. Preservation of water areas.

- (a) *Intent.* It is the intent of this chapter both to safeguard existing and potential development in appropriate locations and to preserve and promote a desirable ecological balance. Insofar as is reasonably practicable, subdivisions shall, therefore, be located, designed and improved to:

- (1) Preserve important natural water areas and related vegetation and wildlife habitats;
 - (2) Avoid creation of upstream impoundments or downstream runoff harmful to such complexes or to existing or potential development in appropriate locations; and
 - (3) Maintain desirable groundwater levels.
- (b) *Maintenance of natural waterways and water areas.* Standards for maintenance of natural waterways and water areas are as follows:
- (1) Where a proposed subdivision is traversed by or includes in whole or in part a watercourse, marsh, pond or lake which is of substantial significance in the ecology of the general area, such water body shall to the maximum extent reasonably feasible be maintained in its natural state, together with bordering lands likely to be inundated at the period of high water during periods of rainfall of ten-year return frequency and other suitable protective strips.
 - (2) In such cases, the subdivision review board, as a condition for plat approval, may make such requirements as are reasonable for the protection of such areas, including the following:
 - a. The subdivision review board may require that streets and/or parkways shall border such areas, setting them apart from residential or other intensive uses; or
 - b. The subdivision review board may require that all or part of such area shall be platted as part of residential or other lots.
 - (3) In making decisions concerning such requirements, the subdivision review board shall consider topography, drainage patterns, soil types, character of existing and potential upland uses, ground cover, erosion control requirements, character of the area to be protected, the adequacy of proposed filter areas, and the like.
 - (4) Where all or a part of such areas are set aside for common use and enjoyment of occupants of the subdivision, arrangements for maintenance by a homeowners' association, management group or other arrangement may be acceptable, if required by the recorded deed restrictions for the development.
- (c) *Changes in location or extent of significant natural waterways and water areas.* The subdivision review board may permit changes in the location or extent of significant natural waterways and/or water areas only after findings based upon reports and recommendations, using the factors enumerated in subsection (b) of this section, that such changes will not adversely affect desirable ecological conditions, drainage or water retention or result in undesirable location or amount of upstream impoundment or downstream discharge.

(Code 1995, § 514.033)

Sec. 36-75. Major new drainageways.

- (a) Where major new drainageways are required in a subdivision, they shall be coordinated with existing and proposed general drainage systems and designed with due regard for safety, appearance and geological effects.
- (b) Aboveground drainageways shall be:
 - (1) Located and constructed to maintain a natural appearance;
 - (2) Limited to safe water depths in easily accessible areas; and
 - (3) Designed to avoid excessive rates of flow, erosion or overflow into developed areas subject to damage.
- (c) In circumstances where the impact of new drainage would be likely to damage or destroy significant existing natural water areas, as described at section 36-74, such drainage shall not be discharged through or into such areas.

(Code 1995, § 514.034)

Sec. 36-76. Protection from flooding.

- (a) No subdivision shall be so located or improved as to:
 - (1) Create impoundments of surface water on developable upstream lands outside the subdivision or increase surface drainage flow across developable downstream lands other than in approved drainageways;
 - (2) Cause erosion onto neighboring property or into water areas; or
 - (3) Raise or lower groundwater levels in a manner which creates adverse effects within the subdivision or in surrounding areas.

Where location of improvements appears likely to have such effects, plats shall not be approved until suitable remedial measures have been provided.

- (b) Such measures may include, as appropriate to the circumstances, the following:
 - (1) Participation in the provision of necessary enlargements or improvements in off-site drainageways;
 - (2) Establishment of water retention and recharge areas; and
 - (3) Mechanical and vegetative means to control runoff and erosion from the subdivision.

(Code 1995, § 514.035)

Cross references: Flood hazard reduction for subdivision proposals, § 44-919.

Sec. 36-77. Blocks.

- (a) *General design criteria.* Lengths, widths and shapes of blocks in a subdivision shall be determined with due regard to the following:

- (1) Provision of adequate building sites suitable to the special needs of the type of use contemplated (residential, commercial, industrial or other);
 - (2) Zoning requirements as to lot sizes and dimensions;
 - (3) The need for convenient access, circulation, traffic control and safety; and
 - (4) Limitations and opportunities of topography and drainage features.
- (b) *Pedestrian crosswalks within blocks.* Pedestrian crosswalks may be required within blocks as follows:
- (1) Where orientation or length of blocks or other considerations justify such action, the subdivision review board may require crosswalks to improve pedestrian circulation and provide access to schools, playgrounds, shopping centers, transportation and other facilities. Where such crosswalks are provided, they shall be located, dimensioned, fenced, screened, lighted or otherwise improved in such a manner as to provide security, tranquility and privacy for occupants of adjoining property and safety for users of the walks.
 - (2) Such pedestrian ways, if suitably improved, may be used by emergency vehicles, but shall not be used by other motor vehicles.

(Code 1995, § 514.036)

Sec. 36-78. Lots.

- (a) *General design criteria.* Lot size, width, depth, shape and orientation shall be appropriate for location within the subdivision and location of the subdivision, and for the type of development and use contemplated. Depth of residential major and minor subdivision lots shall not normally exceed five times the width, except for attached dwellings or when portions in excess of that depth are for the purpose of providing separation from major streets or railroads, nonaccess reservations, easements, or marshes or water areas or protective strips pertaining thereto. The depth-width ratio shall not apply when the width of a lot exceeds 300 feet for its entire depth, and it may be increased in individual cases where good cause exists. The lot depth to width ratio shall not apply to family subdivisions.
- (b) *Minimum dimensions.* Minimum lot dimensions shall be as follows:
- (1) Minimum lot dimensions shall be as specified in the zoning regulations set forth in chapter 44 of this Code for uses on which such limitations are indicated, subject to increases as required by the county public health department's division of environmental health for residential lots not served by public water supply and public sanitary sewerage.
 - (2) Depth and width of lots subdivided for nonresidential purposes shall be adequate for off-street parking and service facilities required by the type of use and development anticipated. Where such lots are to be used for purposes requiring water for domestic use and sanitary sewage disposal

and where public water and/or sanitary sewerage is not provided, they shall also conform to the minimum area requirements set by the county public health department's division of environmental health.

- (c) *Double frontage and reversed frontage lots.* In general, double frontage and reverse frontage lots shall be avoided except where essential to provide residential separation from traffic arteries or to overcome other disadvantages of orientation or topography or to provide protection for adjacent uses. A planting screen easement of at least ten feet shall be provided along the line of lots abutting traffic arteries or other disadvantageous uses, across which there shall be no right of access unless specifically authorized by the subdivision review board. The screening shall be installed by the subdivider and maintained by his successors in title.
- (d) *Side lot lines.* Side lot lines shall be substantially perpendicular or radial to street lines unless a satisfactory lot pattern, easement pattern and area for access can otherwise be provided.
- (e) *Lot lines and utility easements.* Lot lines shall be so arranged with respect to utility easements as to permit efficient installation of utilities without unnecessary irregularities in alignment.
- (f) *Suitable building sites; identification of lots not for building.* Lots for building shall contain suitable building sites, and lots not to be built upon shall be identified in accordance with the following:
 - (1) No subdivision shall be approved unless it has been determined that each lot or parcel intended for building contains a building site:
 - a. Within the inner lines of required yards.
 - b. Determined by the county engineer to be free from inundation and safely accessible from an approved street during rainfall of ten-year return frequency.
 - c. With area equal to at least the following:
 - 1. In residential districts: 5,000 square feet.
 - 2. In nonresidential districts: 50 percent of maximum buildable area permitted by the zoning regulations set forth in chapter 44 in the district, but not less than 1,200 square feet.
 - d. Of configuration reasonably adapted to building.
 - e. Suitable for potential building use as permitted by the zoning regulations set forth in chapter 44 and controlled under the provisions of ordinances and regulations adopted in conformance with the National Flood Insurance Program as provided in article XIV of chapter 44 and without danger from subsidence, heaving, erosion or slippage of soils; from hazards or nuisances incidental to

airports as related to potential uses of such lots; or from other menaces to health, safety or the general welfare.

- (2) As guides for such determinations, the applicable approval authority shall give due consideration to limitations, standards and requirements established in ordinances and regulations adopted in conformance with the National Flood Insurance Program, provision of water and sewerage, proposed drainage and potential types of occupancy and the like.
- (3) Where a lot or parcel is not intended for building, such requirements shall not apply, but such lot or parcel, which might be for utility substations, rights-of-way, and the like, shall be identified on the plat and the limitation noted thus: "Not for a residential building site. No residential building permit shall be issued, nor shall any residential building be erected on this lot."

(Code 1995, § 514.037)

Sec. 36-79. Alternative subdivision designs.

Subdivisions may be designed either as lot-by-lot subdivisions, which are principally characterized by minimum lot size standards applied to each lot, or in any residential zoning districts as cluster subdivisions, which are principally characterized by maximum lot density and minimum open space standards applied to the subdivision site, with lot design standards being of secondary importance. Traditional or lot-by-lot subdivisions must comply with the block and lot design standards in sections 36-77 and 36-78. Cluster subdivisions must comply with the design standards in section 36-80. All subdivisions must comply with the design standards in this article and the dimensional requirements shown on tables 2A through 2C in section 44-88 of the zoning chapter. Cluster subdivisions are allowed in single-family zoning districts and are considered to be major subdivisions. All approval procedures for major subdivisions described in section 36-36 apply to cluster subdivisions.

(Code 1995, § 514.038)

Sec. 36-80. Cluster and traditional subdivision open space design requirements.

- (a) *Purpose and requirements.* The requirements in this section are intended to provide for a subdivision design that is more efficient and better suited to the natural features of the land or would blend into the character of a rural area. It is required that part of the subdivision site which is not devoted to lots and associated roads and utilities is to be set aside as usable open space. The open space requirements for traditional subdivisions are based on the smallest lot size in the development, as provided in table 2C of section 44-88 for open space requirements. Sidewalks may be provided by the developer, if approved by the subdivision review board, as leading to a pedestrian destination point, such as a school, park, etc. Sidewalks may constitute all or part of the open space requirements. The amount of sidewalk shall be calculated at a cost equal to the amount of reduction from the maximum open space requirement, based on current

valuation for property tax purposes. The open space area can be used to provide recreational opportunities for the subdivision's residents, to conserve and protect significant natural areas and environmentally sensitive areas, to conserve important historic resources, and/or to conserve productive farming and forestry uses.

Furthermore, the purpose of a cluster subdivision is to allow lots to be smaller and concentrated on those parts of the subdivision site best suited to accommodate development with the least adverse impact. Clustering of lots allows smaller and less costly networks of roads and utilities; encourages closer-knit and potentially safer neighborhoods; preserves sensitive farmland, woodlands, scenic views and open space; and reduces the amount of impervious surface and resulting stormwater runoff. The open space provided by clustering can be used to provide recreational opportunities for the subdivision's residents or employees, to conserve and protect significant natural areas and environmentally sensitive areas, to conserve important historic resources, and/or to conserve productive farming and forestry uses. It can also be used for the installation of individual wells or the installation of all or part of individual septic systems not to exceed 30 percent of the open space.

- (b) *Minimum cluster subdivision site size.* The minimum land area within a parcel to create a cluster subdivision shall be at least five contiguous acres.
- (c) *Maximum number of lots in cluster subdivision.* The maximum number of lots allowed within a cluster subdivision shall be determined by dividing the total acreage in the tract, excluding state road rights-of-way, by the lot size requirement shown in tables 2A and 2C of section 44-88.
- (d) *Lot design and dimensional requirements for subdivisions.* Provided the arrangement, design and shape of lots is such that lots provide satisfactory and desirable sites for building and contribute to the overall preservation of open space, specifically described in subsection (f)(1) of this section, and all other requirements in this section and applicable local, state and federal requirements are met, the minimum lot area, lot width and yard requirements as shown on table 2A of section 44-88 for the applicable zoning district may be reduced as follows:
 - (1) The minimum lot area shall not be less than 25 percent of the lot area required in the underlying zoning, but shall not be smaller than 7,000 square feet.
 - (2) The minimum lot width requirement may be reduced by 50 percent, but shall not be less than 45 feet.
 - (3) The minimum front yard requirement may be reduced by 40 percent, but shall not be less than 20 feet.
 - (4) The minimum side and rear yard requirements may be reduced by 40 percent, but shall be no less than five feet.

Yards abutting the boundaries of the entire cluster development site shall be no less than the minimum requirements of the underlying zoning district. In lieu of this requirement, a permanent wooded buffer of 50 feet in width may be maintained around the perimeter of

the development. The wooded buffer shall be connected to the open space within the development.

(e) *Required open space.* Land within the subdivision site that is not contained in lots or in rights-of-way or parcels devoted to accommodating necessary roads and utilities shall be in one or more connected parcels dedicated or reserved as permanent open space. The total area of parcels dedicated or reserved as permanent open space shall make up at least 30 percent of the area of the subdivision site where the subdivision is located.

(f) *Open space use, location and design.* Design requirements for open space use, location and design are as follows:

(1) Open space shall be dedicated or reserved for one or more of the following uses:

- a. Conservation of and avoidance of development in any readily identifiable natural hazard areas, i.e., areas that potentially pose a significant hazard to people or property, including:
 1. Designated floodways and floodway fringes identified as part of a flood insurance study prepared by the Federal Emergency Management Agency;
 2. Other perennially wetlands (streams, lakes, ponds, etc.) as identified from the National Wetlands Inventory prepared by the U.S. Fish and Wildlife Service or on county soil surveys or by on-site analysis conducted by a registered engineer, land surveyor, landscape architect, architect or land planner using United States Geological Survey topographic maps;
 3. Steep slopes (greater than 20 percent) and lands whose slope and/or soils make them particularly susceptible to erosion when disturbed by development activities;
- b. Conservation and protection of any identified significant natural areas (e.g., rare plant communities, important wildlife habitat) or other environmentally sensitive areas where development might threaten water quality or ecosystems (e.g., watershed buffers, groundwater recharge areas);
- c. Conservation and protection of any identified important historic resources (e.g., homesteads, mills, barns, archeological sites) identified from a local archeological or architectural survey or an individual site survey;
- d. Provision of active and/or passive outdoor recreation opportunities (e.g., ballfields, playgrounds, tennis courts, swimming pools, basketball courts, golf courses, bikeways, walking trails, nature trails, and picnic areas), either for the general public or for the

subdivision's residents or employees and their guests. Note: This does not preclude a membership requirement or monetary charge for use of recreation facilities, such as a golf, swim, or tennis club, as long as subdivision residents or employees have an opportunity to join the club or pay to use club facilities; or

- e. Retention of productive farmland or forestland for continued agricultural and/or forestry use.
- (2) The highest priority for the location, design, and use of open space shall be given to conserving and avoiding development in any natural hazard areas on the subdivision site.
 - (3) Open space may contain only such buildings, structures, accessways, and parking facilities as are necessary and accessory to its principal uses, e.g., pedestrian path, recreational clubhouse, utility lines, driveway, small parking area, barns and other farm storage and processing facilities.
 - (4) The location, size, character, and shape of required open space shall be appropriate to its intended use (e.g., open space proposed to be used for recreation, particularly active recreation, shall be located and designed so as to be conveniently and safely reached and used by those persons it is intended to serve, and open space proposed to be used for ballfields, playing fields, or other extensive active recreational facilities should be located on land that is relatively flat and dry).
- (g) *Open space dedication or reservation.* Open space shall be dedicated or reserved in accordance with the following:
- (1) Subdivision occupants shall be ensured direct access to and use of the subdivision's open space, by conveying that portion of open space to a homeowners' association, property owners' association, or similar legal entity meeting the provisions of section 36-81 or to a public agency or nonprofit organization that is organized for, capable of, and willing to accept responsibility for managing the open space for its intended purpose and that will ensure subdivision occupants direct access to and use of the open space. Any other open space provided may be conveyed to such organizations or to any agency, organization, person, or other legal entity that is organized for, capable of, and willing to accept responsibility for managing the open space for its intended purpose, provided such conveyance is restricted to ensure continued open space use and maintenance.
 - (2) Each dedicated or reserved open space parcel shall be shown on all subdivision plans and on a record plat recorded with the county register of deeds, with a notation of its area and its intended open space use, as identified in subsection (f) of this section. The owner of an open space parcel may rededicate or re-reserve the parcel for another open space use allowed under this subsection (g) by recording a record plat showing the parcel and its new intended open space use.

- (h) *Open space maintenance.* The owner of the open space shall be responsible for maintaining the open space so that it continues to effectively function for its intended use, and any dedication or conveyance of an open space parcel shall provide for such responsibility. Where the subdivision is located within a watershed protection district, retention of undeveloped open space in a vegetated or natural state, as required in section 44-708, shall be ensured by maintenance provisions filed with the county register of deeds, either as part of recorded documentation providing for establishment of a homeowners' association or similar legal entity that is to be responsible for maintenance and control of open space, as provided for in section 36-81, or in a maintenance agreement recorded with the property deeds.
- (i) *Design procedure.* Design procedures are as follows:
 - (1) *Existing features/site analysis.* An existing features/site analysis map shall be submitted to the director of planning and development. The map shall indicate all features that exist on the subject site as described in subsection (f) of this section.
 - (2) *Identification of open space conservation areas.* Open space areas shall be identified. Guidance as to which parts to classify as open space conservation areas shall be based upon three factors:
 - a. On-site visits by the director of planning and development, the subdivider and the site designer.
 - b. The open space standards described in subsection (f) of this section.
 - c. The evaluation criteria as shown in subsection (j) of this section.
 - (3) *Principal structure setback from open spaces.* The principal structure must be set back a minimum of 50 feet from all open space lots lines.
 - (4) *Street, trail and sidewalk locations and alignments.* All streets, sidewalks and trails shall be located and aligned on the site in the most reasonable and economical manner. Trails shall be provided from housing clusters to the designated open space.
 - (5) *Location of lot lines.* All lot lines should be drawn around house sites in compliance with the dimensional requirements described in subsection (d) of this section.
- (j) *Evaluation criteria.* For any given site, resources may vary widely by importance. Likewise, for each type of resource, there should be examples of greater or lesser significance. In evaluating the layout of a site, the following evaluation criteria will be considered in determining the site's features and allowing for site design flexibility:
 - (1) The open space shall be reasonably contiguous and shall abut existing open space on adjacent sites.

- (2) All wetlands, flood hazard areas and 20-percent slopes shall not be cleared, filled or graded except as may be approved by the subdivision review board. Water features shall constitute no more than 50 percent of the open space area.
- (3) Dwellings shall be located in unwooded parts of the site to prevent unnecessary clearing practices. Exceptions may be made when a site investigation by county staff reveals all or part of wooded areas are not worth saving due to tree decay/disease or unsightly overgrowth.
- (4) The impacts on larger woodlands over five acres shall be minimized as much as practical.
- (5) Where farmland preservation is the goal of a site design, dwellings shall be located away from active farming areas, as is practical.
- (6) Dwellings in open fields or pastures shall be located at the farthest edges of a field as possible as seen from any public road.
- (7) Where preserving scenic views is the goal of a site design, such scenic views should remain unblocked and uninterrupted. In wooded areas, where enclosure (i.e., a tree canopy) is a feature to be maintained, a no-cut and no-build buffer shall be considered along the public roadway.
- (8) Where historic or archeological preservation is the goal of a site design, new streets, driveways, fences and/or utilities shall not interfere with the historic site. Building designs of the new homes shall reflect the qualities and designs of the historic buildings, as much as is practical.
- (9) Where power line rights-of-way are proposed to be included as part of the open space, the right-of-way shall not exceed 75 percent of the required open space as stated in subsection (e) of this section.

(Code 1995, § 514.039)

Sec. 36-81. Homeowners' associations.

- (a) *Establishment.* If a homeowner's association or similar legal entity is to be responsible for the maintenance and control of open space, recreational facilities, or other common areas and facilities associated with a subdivision, it shall be established so that it has clear legal authority to maintain and exercise control over the common areas and facilities, including the power to compel contributions from subdivision residents to cover their proportionate shares of the costs associated with the maintenance of the common areas and facilities. Such association or similar legal entity shall be established before any dwelling unit or lot in the subdivision is sold or any building in the subdivision is occupied.
- (b) *Documentation.* Documents providing for the establishment of a homeowners' association or similar legal entity in accord with this section shall be submitted to and approved by the director of planning and development before any plat for the development is recorded. The review by the director of planning and development

shall be limited to ensuring that the homeowners' association or similar legal entity is established so that it has clear legal authority to maintain and exercise control over the common areas and facilities, including the power to compel contributions from subdivision residents to cover their proportionate shares of the costs associated with the maintenance of the common areas and facilities.

(Code 1995, § 514.040)

Sec. 36-82. Markers and monuments.

- (a) Monuments, complying with the requirements of G.S. 47-30 and the current edition of the Standards of Practice for Land Surveying in North Carolina, shall be placed in all subdivisions.
- (b) Any permanent monuments or markers displaced or destroyed during the course of development or construction in the subdivision shall be accurately witnessed and replaced upon completion of such development or construction.

(Code 1995, § 514.046)

Sec. 36-83. Ground cover.

All land within the subdivision right-of-way which is not used for structures, vehicular or pedestrian traffic, or for other approved landscaping shall be provided with grass or other ground cover. Such ground cover shall be installed as set forth in the Manual of Practice. Ground cover may include appropriate plant materials preserved in place.

(Code 1995, § 514.049)

Sec. 36-84. Driveways.

Curb cuts, where provided in the subdivision, shall begin not less than three feet from lot lines as projected to meet the line of the pavement edge. Design and construction of portions of driveways within rights-of-way shall be constructed in accordance with the requirements of the state department of transportation.

(Code 1995, § 514.050)

Sec. 36-85. Water supply and sanitary sewer.

- (a) *Public water supply required.* Public water supply is required in a subdivision as follows:
 - (1) Any subdivision, including estate, family, minor and major, which has public water system lines available shall be required to extend the public water system throughout the subdivision to each lot located therein. All required water line extensions shall include appropriate valves, hydrants, taps and service to the property line of each lot as required by the standards of the provider of the service. For subdivisions located within

the jurisdiction of this chapter, the term "available" shall mean that there is an existing water line of adequate size and water flow and/or pressure, as determined by the water provider, abutting the property and/or right-of-way, provided there are no legal or documented topographic constraints which prevent the subdivider from connecting onto and extending the existing system to the subdivision.

- (2) Every lot in a major subdivision shall be served by public water in accordance with table 2C of section 44-88 based on the smallest lot size in the development. Where public water is not required in accordance with table 2C of section 44-88, the lots shall be served by individual wells approved by the county division of environmental health.
- (b) *Public sanitary sewer required; exceptions.* Public sanitary sewer is required as follows:
- (1) Any subdivision, including estate, family, minor and major subdivisions, which has public sewer system lines available shall be required to extend the public sewer system throughout the subdivision to each lot located therein. All required sewer line extensions shall include appropriate manholes, lift stations, pumps, cleanouts, taps and service to the property line of each lot as required by the standards of the provider of the service. For subdivisions located within the jurisdiction of this chapter, the term "available" shall mean that there is an existing sewer line of adequate size and flow, as determined by the utility provider, abutting the property and/or right-of-way, provided there are no legal or topographic constraints which prevent the subdivider from connection onto and extending the existing system to the subdivision.
 - (2) Every lot in a major subdivision shall be served by public sewer in accordance with table 2C of section 44-88 based on the smallest lot size in the development. Where public sewer is not required in accordance with table 2C of section 44-88, each lot in the subdivision shall be served by an individual on-site septic system approved by the county division of environmental health.

(Code 1995, § 514.052)

Cross references: Water and sewer, ch. 42.

Sec. 36-86. Erosion protection; preservation of topsoil and vegetation.

- (a) In general, during the preparation of the subdivision and installation of improvements, appropriate measures shall be taken to prevent erosion and damaging siltation on the property and on adjoining land or water areas in accord with the Rules and Regulations for Erosion and Sediment Control, published by the state sedimentation control commission.
- (b) In any grading or filling operations, desirable topsoil shall be conserved and redistributed as such, particularly to cover exposed subsoils.

- (c) Trees, shrubs and ground cover existing at the beginning of development operations shall be preserved to the maximum extent reasonably feasible where they are of species and in locations likely to add amenity to the completed development.
- (d) The subdivision review board may require preservation of specified trees or other vegetation in connection with a particular development, except upon findings that such preservation is not feasible in view of the requirements for the installation of public utilities and facilities.
- (e) The subdivision review board may grant a conditional approval of a preliminary subdivision plat, provided that an erosion control plan approval letter is submitted to the planning department within 90 days.

(Code 1995, § 514.053)

Sec. 36-87. Fire protection.

All lots served by a municipal public water supply system in a subdivision shall also be afforded fire protection by means of hydrants, installed under uniform standards and specifications.

(Code 1995, § 514.054)

Cross references: Fire prevention and protection, ch. 18.

Sec. 36-88. Underground utilities.

All new on-site utilities (electric, telephone, cable, etc.) in major subdivisions shall be located underground unless technical restrictions prohibit doing so. The subdivision review board shall determine if technical restrictions are applicable. Appropriate utility easements shall be noted on final major subdivision plats referring to underground utility locations.

(Code 1995, § 514.055)

Cross references: Water and sewer, ch. 42.

Secs. 36-89--36-115. Reserved.

ARTICLE IV. COMPLETION; MAINTENANCE; OCCUPANCY

Sec. 36-116. Completion required before approval of final plat.

Except as provided in section 36-117 concerning performance guarantees, before subdivision final plats are approved, all required improvements shall be completed by the applicant or his agents and inspected and approved by appropriate public officials or agencies.

(Code 1995, § 514.065)

Sec. 36-117. Performance guarantees.

- (a) *Generally.* In lieu of completion of all or part of required improvements prior to approval of subdivision final plats, the applicant may post a performance guarantee in the amount as indicated under subsection (d)(3) of this section for the construction, installation and dedication of the uncompleted portion of the required improvements.
- (b) *Type of guarantee.* The type of the guarantee shall be as follows:
 - (1) The performance guarantee may be in the form of a certified check, a no-contest irrevocable bank letter of credit or a performance and payment bond underwritten by a state-licensed corporate surety company.
 - (2) Except for certified checks, such sureties shall not be accepted unless the county attorney has made a review thereof and rendered a written opinion that the interests of the county are fully protected.
 - (3) The certified check should be deposited with the county manager, as escrow agent, who shall deposit it in an interest-bearing escrow account of the county, with all interest accruing to the applicant.
 - (4) The no-contest irrevocable bank letter of credit shall be from a banking corporation licensed to do business in the state and having an office in the county. The terms of the letter shall include the absolute right of the county manager to withdraw funds from the bank forthwith upon the county manager's certifying to the bank that the terms and conditions of the performance guarantee have been breached. The expiration date of the letter of credit shall be at least six months past the anticipated completion date of the required improvements.
- (c) *Plans, contracts and construction programs.* Procedures for submission of plans, contracts and construction programs are as follows:
 - (1) The applicant has the option of submitting either: (i) executed contracts

from state-licensed contractors, made assignable to the applicant and the county; or (ii) a per-unit cost sheet submitted by a registered, professional engineer who has civil engineering qualifications. Plans, specifications, quantities, unit costs or executed contracts shall be provided by the applicant to the director of planning and development, together with a schedule indicating time of initiation and completion of the work. The number of copies shall be as required for records and processing in the particular case. The complete performance guarantee package shall be submitted concurrently with the final plat.

- (2) The director of planning and development shall refer such plans, executed contracts or cost sheets and programs to governmental bodies, including county engineering staff, exercising control for their recommendations as to whether the proposals meet all requirements of such agencies, as to sufficiency of the costs and as to reasonableness of construction programs.
- (d) *Amount and terms of guarantee; time limits.* The amount, terms and time limits of the guarantee shall be in accordance with the following:
- (1) Following receipt of such recommendations, the director of planning and development shall review the information submitted as to the amount and terms of the performance guarantee, including the time of initiation and completion of the work; provisions concerning extensions for cause; and provisions for release of the guarantee upon completion of the work. If the information is complete and the guarantee amount is deemed satisfactory, the director shall administratively approve the performance guarantee package.
 - (2) The time between initiation and the completion of the required improvements shall not exceed one year from the date on which the performance guarantee was approved.
 - (3) The guarantee shall be 1.25 times the executed contract amount or the certified cost estimate, whichever is provided. The amount of the guarantee shall be sufficient to provide adequate funds to the county to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. In reviewing the amount of the performance guarantee, the director of planning and development shall consider the difficulty of restarting a closed project, the size and complexity of the required improvements, the record of the applicant and the site conditions.
 - (4) Extensions for performance guarantees may be granted by the director of planning and development subject to a review of the circumstances surrounding the request for an extension and the record of the applicant. Property owners in the development shall be notified and shall be given an opportunity to comment on the request for an extension of the performance guarantee.
- (e) *Inspections; reports; cost responsibility.* Procedures for inspections and reports

and the responsibility for the cost are as follows:

- (1) Governmental bodies exercising control shall make inspections to determine whether work has started as scheduled, shall make inspections as are necessary during the course of work, and shall make final inspections to determine whether stages of construction required under the performance guarantee have been completed in accordance with the terms of the guarantee.
 - (2) Within ten days of such inspections, copies of reports of the results thereof shall be provided to the director of planning and development.
 - (3) The full cost of making such inspections and preparing such reports shall be paid by the applicant.
 - (4) In lieu of having inspections conducted by the governmental body, the applicant, at his cost, may elect to have a registered, professional engineer who has civil engineering qualifications conduct the inspections as stated in subsection (e)(1) of this section and submit reports to the director of planning and development.
- (f) *Action on inspection reports.* The following actions may be taken on inspection reports:
- (1) *Reports indicating satisfaction of requirements.* Where such reports indicate satisfactory completion of work within time limits set and in accord with other terms of the performance guarantee, for agreed-upon stages or for the entire work, the director of planning and development shall so indicate by first class mail to the applicant, any surety company involved and the county manager. The county manager, upon such notification and any further assurance he may require from the county attorney or governmental bodies exercising operating control, shall then release the performance guarantee in accordance with the terms thereof.
 - (2) *Reports indicating failure to satisfy requirements.* Where such reports indicate failure to complete work on schedule in full compliance with the terms of the performance guarantee, the director of planning and development shall so indicate by first class mail to the applicant, governmental bodies exercising control, any surety company involved, and the county manager. Such notice shall indicate that, unless action required under the terms of the performance guarantee is completed within 30 days of the date of such notification, the performance guarantee or portions thereof, set forth in its terms, shall be called. Unless such action is completed, as evidenced by inspections and reports from governmental bodies exercising control transmitted through the director of planning and development, the county manager shall call the performance guarantee or affected portions thereof.
 - (3) *Reports indicating unsatisfactory progress.* Where such reports indicate that work initiated appears unlikely not to be completed on schedule, and

where the performance guarantee provides for extension of time for cause, the director of planning and development shall notify the applicant by first class mail and any surety company involved concerning the potential need for an application for such extension. Where such notice has been given, no application for an extension shall be considered after expiration of the original schedule date.

(Code 1995, § 514.066)

Sec. 36-118. Failure to complete work under performance guarantee.

Where work required under the terms of any performance guarantee given pursuant to this article is not completed by the applicant as specified therein, the county manager, following the call of the guarantee, shall take such action as is appropriate in the circumstances of the case to procure the completion of the required improvements at the earliest reasonable time, according to the plans and specifications.

(Code 1995, § 514.067)

Sec. 36-119. Maintenance of land and improvements.

The applicant shall maintain all land and required improvements offered for dedication in a subdivision in satisfactory condition until acceptance of the dedication.

(Code 1995, § 514.068)

Sec. 36-120. Guarantee of other governmental agency or public utility.

Where all or part of required subdivision improvements are to be completed by another government agency or public utility, the director of planning and development may accept the written guarantee of such agency to complete such improvements within a time to be mutually agreed upon, with time for completion limited as provided in section 36-117(d).

(Code 1995, § 514.069)

Sec. 36-121. Building permits and certificates of occupancy.

- (a) Building permits may not be issued for construction of residential structures in a subdivision prior to completion of required improvements unless a performance guarantee has been approved by the director of planning and development.
- (b) Certificates of occupancy may be issued and buildings occupied only when all of the following improvements are available and as further provided in subsection (c) of this section:
 - (1) Streets shall be passable for private, service and emergency vehicles under normal weather conditions, provided that distance along such streets shall not exceed 1,200 feet by normal routes.
 - (2) Driveways shall be passable under normal weather conditions.

- (3) Drainage shall be installed and operative, thus ensuring that, under normal weather conditions, there will be no flooding of the building site or accessways to the site.
- (4) Erosion protection, acceptable under normal weather conditions, shall be installed.
- (5) Domestic water supply and sanitary sewerage shall be installed and operative.
- (c) No such permits or certificates shall be issued unless all remaining required improvements are covered by a performance guarantee and the applicant accepts tort liability pending completion of all required improvements.

(Code 1995, § 514.070)

Secs. 36-122--36-150. Reserved.

ARTICLE V. AMENDMENTS AND ENFORCEMENT

Sec. 36-151. Authority.

This chapter may be amended by the board of commissioners by approval, in the usual form, of an ordinance specifying the changes to be made.

(Code 1995, § 514.080)

Sec. 36-152. Planning board and administration review; recommendation.

- (a) All proposed amendments to this chapter, except those initiated by the planning board, shall be submitted to the planning board for its recommendations as to approval, approval with specified alterations, or denial. Unless such recommendation is forthcoming within 45 days of submittal, except if a longer period is agreed upon in writing by the person initiating the proposal, the board of commissioners may proceed to act without a recommendation.
- (b) Prior to acting, the planning board shall afford the county manager, on behalf of the administrative branch of the county government, the opportunity to submit comments upon the proposed amendment.

(Code 1995, § 514.081)

Sec. 36-153. Public hearing and notice.

No proposed amendment to this chapter shall be acted upon by the board of commissioners until after a public hearing thereon. A notice of the public hearing shall be published once a week for two successive calendar weeks in a newspaper having general circulation in the county. The notice shall be published the first time not less than ten days nor more than 25 days before the date set for the hearing. In computing such period, the day of publication is not included, but the day of the hearing shall be included.

(Code 1995, § 514.082)

Sec. 36-154. Limitation on resubmittal.

Except when initiated by the board of commissioners or the planning board, no proposed amendment to this chapter failing of approval shall be considered in substantially the same form within one year of the date of failure to win approval.

(Code 1995, § 514.083)

Sec. 36-155. Violations; remedies.

- (a) Appropriate actions and proceedings may be taken at law or in equity to:
 - (1) Prevent any violation of this chapter;
 - (2) Prevent unlawful construction;
 - (3) Recover damages;
 - (4) Restrain, correct or abate a violation; and
 - (5) Prevent illegal occupancy of a building, structure or premises.
- (b) No building permit or certificate of occupancy shall be issued nor shall water, sewer or other public facilities or services be extended to or connected with any land for which approval of a subdivision is required under this chapter unless the sections of this chapter are satisfied.

(Code 1995, § 514.998)

Sec. 36-156. Penalty.

Any violation of this chapter or amendments thereto shall constitute a misdemeanor. Those convicted of such violations shall be punished as provided by G.S. 14-4 and section 1-14. Each day that a violation continues shall be considered a separate violation and punishment assigned accordingly.

(Code 1995, § 514.999)